

---

---

# SENATE BILL No. 451

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-27-3.

**Synopsis:** Home builders opportunity to cure defects. Requires a home owner to allow a construction professional an opportunity to cure alleged defects prior to initiating legal action. Requires a construction professional who is notified by a home owner of an alleged construction defect to respond to the home owner within a certain period.

**Effective:** July 1, 2003.

---

---

### Alting, Lewis

---

---

January 21, 2003, read first time and referred to Committee on Commerce and Consumer Affairs.

---

---

C  
o  
p  
y



First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## SENATE BILL No. 451

A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 32-27-3 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2003]:

4 **Chapter 3. Notice and Opportunity to Repair**

5 **Sec. 1. The definitions in this section apply throughout this**  
6 **chapter.**

7 (1) "Action" means any civil lawsuit or action in contract or  
8 tort for damages or indemnity brought against a construction  
9 professional to assert a claim, whether by complaint,  
10 counterclaim, or cross claim, for damage or the loss of use of  
11 real or personal property caused by a defect in the  
12 construction of a residence or in the substantial remodeling of  
13 a residence. "Action" does not include any civil action in tort  
14 alleging personal injury to or wrongful death of a person or  
15 persons resulting from a construction defect.

16 (2) "Association" means an association of co-owners (as  
17 defined in IC 32-25-2-2).



C  
o  
p  
y

(3) "Claimant" means a home owner who or an association that asserts a claim against a construction professional concerning a defect in the construction of a residence or in the substantial remodeling of a residence.

(4) "Construction professional" means an architect, a builder, a builder vendor, a contractor, a subcontractor, an engineer, or an inspector, including but not limited to any person performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property, whether operating as a sole proprietor, a partnership, a corporation, or another business entity.

(5) "Home owner" means:

(A) any person, company, firm, partnership, corporation, association, or other business entity that contracts with a construction professional for the construction, sale, or construction and sale of a residence;

(B) an association; or

(C) a subsequent purchaser of a residence from a home owner as defined in clause (A) or (B).

(6) "Residence" means a:

(A) single family house;

(B) duplex;

(C) triplex;

(D) quadraplex; or

(E) unit in a multiple unit residential structure in which title to the individual unit is transferred to the owner under a condominium or cooperative system.

For purposes of clause (E), the term includes common areas and facilities (as defined in IC 32-25-2-4).

(7) "Serve" or "service" means personal service or delivery by certified mail to the last known address of the addressee.

(8) "Substantial remodeling" means a remodeling of a residence, the total cost of which exceeds fifty percent (50%) of the assessed value under IC 6-1.1-1-3(a)(2) of the residence at the time that the contract for the remodeling work was made.

**Sec. 2. (a)** At least sixty (60) days before filing a construction defect action against a construction professional, the claimant must serve written notice of claim on the construction professional. The notice of claim must state that the claimant asserts a construction defect claim against the construction professional and must

C  
o  
p  
y



1 describe the claim in reasonable detail sufficient to determine the  
2 general nature of the defect.

3 (b) Within twenty-one (21) days after service of a notice of claim  
4 under subsection (a), the construction professional must serve a  
5 written response on the claimant. The written response must do  
6 one (1) of the following:

7 (1) Propose to inspect the residence that is the subject of the  
8 claim and complete the inspection within a specified time  
9 frame. A response made under this subdivision must include  
10 the statement that the construction professional shall, based  
11 on the inspection, offer to remedy the defect, compromise by  
12 payment, or dispute the claim.

13 (2) Offer to compromise and settle the claim by monetary  
14 payment without inspection. A construction professional's  
15 offer under this subdivision may include, but is not limited to,  
16 an express offer to purchase the claimant's residence that is  
17 the subject of the claim and to pay the claimant's reasonable  
18 relocation costs.

19 (3) State that the construction professional disputes the claim  
20 and will neither remedy the construction defect nor  
21 compromise and settle the claim.

22 Sec. 3. (a) If the construction professional disputes the claim or  
23 does not respond to the claimant's notice of claim within the time  
24 set forth in section 2(b) of this chapter, the claimant may bring an  
25 action against the construction professional for the claim described  
26 in the notice of claim without further notice.

27 (b) If the construction professional makes:

28 (1) a proposal to inspect the residence under under section  
29 2(b)(1) of this chapter; or

30 (2) an offer to compromise and settle the claim by monetary  
31 payment without inspection under under section 2(b)(2) of  
32 this chapter;

33 and the claimant rejects the proposal or offer, the claimant must  
34 serve written notice of the rejection on the construction  
35 professional. After service of the rejection, the claimant may bring  
36 an action against the construction professional for the construction  
37 defect claim described in the notice of claim. After service of the  
38 rejection, the claimant may bring an action against the  
39 construction professional for the construction defect claim  
40 described in the notice of claim.

41 (c) If the construction professional does not receive from the  
42 claimant either an acceptance or rejection of the construction

C  
o  
p  
y



professional's inspection proposal or settlement offer within sixty (60) days after the claimant's receipt of the construction professional's response, the construction professional may terminate the proposal or offer by serving written notice on the claimant.

(d) If the construction professional terminates a proposal or offer under subsection (c), the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim.

Sec. 4. (a) If the construction professional makes a proposal to inspect the residence under section 2(b)(1) of this chapter and the claimant elects to allow the construction professional to inspect in accordance with the construction professional's proposal, the claimant must provide the construction professional and the construction professional's contractors or other agents reasonable access to the claimant's residence during normal working hours to inspect the premises and the claimed defect.

(b) Within fourteen (14) days after the completion of an inspection pursuant to a proposal under section 2(b)(1) of this chapter, the construction professional must serve on the claimant:

(1) a written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction necessary to remedy the defect described in the claim, and a timetable for the completion of such construction;

(2) a written offer to compromise and settle the claim by monetary payment under to section 2(b)(2) of this chapter; or

(3) a written statement that the construction professional will not proceed further to remedy the defect.

(c) If the construction professional:

(1) makes a written offer to remedy the construction defect under subsection (b)(1) but does not proceed further to remedy the construction defect within the agreed timetable; or

(2) fails to serve a written offer or statement on the claimant under subsection (b);

the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(d) If the construction professional makes an offer under subsection (b)(1) or (b)(2) to remedy the construction defect or to

C  
o  
p  
y



1       compromise and settle the claim by monetary payment and the  
2       claimant rejects the offer, the claimant shall serve written notice  
3       of the claimant's rejection on the construction professional. After  
4       service of the rejection notice, the claimant may bring an action  
5       against the construction professional for the construction defect  
6       claim described in the notice of claim.

7       (e) If the construction professional makes an offer under  
8       subsection (b)(1) or (b)(2) and does not receive an acceptance or  
9       rejection of the offer from the claimant within sixty (60) days after  
10      the claimant's receipt of the construction professional's response,  
11      the construction professional may terminate the offer by serving  
12      written notice on the claimant.

13      Sec. 5. (a) To accept the offer of a construction professional to  
14      remedy the construction defect under section (4)(b)(1) of this  
15      chapter, the claimant must serve on the construction professional  
16      a written notice of acceptance within a reasonable time period  
17      after receipt of the offer, and not later than sixty (60) days after  
18      receipt of the offer.

19      (b) A claimant who accepts a construction professional's offer  
20      under section 4(b)(1) of this chapter must provide the construction  
21      professional and the construction professional's contractors or  
22      other agents reasonable access to the claimant's residence during  
23      normal working hours to perform and complete the construction  
24      by the timetable stated in the offer.

25      (c) After the acceptance of an offer under section 4(b)(1) of this  
26      chapter, the claimant and construction professional may, by  
27      written mutual agreement, alter the extent of construction or the  
28      timetable for completion of construction stated in the offer,  
29      including but not limited to construction to repair additional  
30      defects.

31      Sec. 6. Any action commenced by a claimant before compliance  
32      with the requirements of this chapter is subject to dismissal  
33      without prejudice, and may not be recommenced until the claimant  
34      complies with the requirements of this section.

35      Sec. 7. Nothing in this section may be construed to prevent a  
36      claimant from commencing an action on the construction defect  
37      claim described in the notice of claim if the construction  
38      professional fails to perform the construction agreed upon, fails to  
39      remedy the defect, or fails to perform according to the timetable  
40      agreed upon under section 4(b)(1) or 5 of this chapter.

41      Sec. 8. (a) Before commencing any action alleging a construction  
42      defect, or after the dismissal of any action without prejudice under

C  
o  
p  
y



section 6 of this chapter, the claimant may amend the notice of claim to include construction defects discovered after the service of the original notice of claim. The claimant must comply with the requirements of this section with respect to the additional defects discovered.

(b) The service of an amended notice of claim relates back to the original notice of claim for purposes of the applicable statutes of limitations and repose. Claims for defects discovered after the commencement or recommencement of an action may be added to the action only after providing notice to the construction professional of the defect and allowing for response under section 4(b) of this chapter.

Sec. 9. (a) If a claimant:

- (1) unreasonably rejects a reasonable written offer of settlement made under this chapter; or
- (2) does not permit the construction professional a reasonable opportunity to inspect or to repair the defect under a reasonable offer of settlement;

and thereafter commences an action governed by this chapter, the court may deny the claimant attorney's fees and costs and award attorney's fees and costs to the construction professional.

(b) Any sums paid under a homeowners warranty, other than sums paid in satisfaction of claims that are collateral to any coverage issued to or by the construction professional, must be deducted from any recovery.

(c) If a contractor fails to comply with the requirements of this chapter, the claimant is not obligated to comply further with the provisions of this chapter.

Sec. 10. (a) In every action brought against a construction professional, the claimant, including a construction professional asserting a claim against another construction professional, must file with the court and serve on the defendant a list of known construction defects in accordance with this section.

(b) The list of known construction defects must contain a description of the construction that the claimant alleges to be defective. The list of known construction defects must be filed with the court and served on the defendant within sixty (60) days after the commencement of the action or within such longer period as the court in its discretion may allow.

(c) The list of known construction defects may be amended by the claimant to identify additional construction defects as they become known to the claimant.

C  
O  
P  
Y



(d) The list of known construction defects must specify, to the extent known to the claimant, the construction professional responsible for each alleged defect identified by the claimant.

(e) If a subcontractor or supplier is added as a party to an action under this section, the party making the claim against the subcontractor or supplier must serve on the subcontractor or supplier the list of construction defects in accordance with this section within sixty (60) days after service of the complaint against the subcontractor or supplier, or within such period as the court in its discretion may allow.

Sec. 11. (a) Upon entering into a contract for sale, construction, or substantial remodeling of a residence, a construction professional must provide notice to each home owner of the construction professional's right to offer to cure construction defects before a home owner may commence litigation against the construction professional. The notice must be conspicuous and may be included as part of the underlying contract signed by the home owner.

(b) The notice required by this subsection must be in substantially the following form:

**"IC 32-27-3 CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE SELLER OR BUILDER OF YOUR HOME. SIXTY (60) DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE SELLER OR BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR SELLER OR BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE BUILDER OR SELLER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT."**

(c) This chapter does not preclude or bar any action if notice is not given to the home owner as required by this section.

Sec. 12. Nothing in this chapter shall be construed to hinder or otherwise affect the employment, agency, or contractual relationship between and among home owners and construction professionals during the process of construction or remodeling and does not preclude the termination of those relationships as allowed



C  
o  
p  
y



1 under current law. Nothing in this chapter shall negate or  
2 otherwise restrict a construction professional's right to access or  
3 inspection provided by law, covenant, easement, or contract.

4 **Sec. 13. (a)** If a written notice of claim is served under section 2  
5 of this chapter within the time prescribed for the filing of an action  
6 against a construction professional based on an alleged  
7 construction defect, the applicable statute of limitations for  
8 construction related claims is tolled with respect to the alleged  
9 construction defect described in the notice of claim from the day on  
10 which the notice of claim is served until sixty (60) days after the  
11 period of time during which the filing of an action is barred under  
12 this chapter.

13 **(b)** With respect to an alleged construction defect to which this  
14 chapter applies, all claims or causes of action accrue and the  
15 applicable statute of limitation runs as set forth in IC 32-30-1-5. If  
16 a written notice is filed under section 2 of this chapter within the  
17 time prescribed for the filing of an action against a construction  
18 professional based on an alleged construction defect, the period  
19 within which an action may be filed under the applicable statute of  
20 limitations is extended to include the period during which the filing  
21 of an action is barred under this chapter plus sixty (60) days.

C  
o  
p  
y

